

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1106 of 1995

AND

CIVIL REVISION APPLICATION Nos.1107 and  
1112 to 1140 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
GUJARAT SMALL INDUSTRIES CORPORATION LTD.

Versus

UNION OF INDIA  
-----

Appearance:

CIVIL REVISION APPLICATION NOS.1106, 1107, 1112 to  
1115 of 1995.

MR PV HATHI for Petitioner

MS SIDHDHI TALATI, AGP for Respondent No. 1

MR SN THAKKAR for Respondent No. 2

CIVIL REVISION APPLICATION NOS.1116 TO 1121 OF 1995

MR PV HATHI for Petitioner

MR JJ YAGNIK for Respondent No. 1

MR SN THAKKAR for Respondent No. 2

CIVIL REVISION APPLICATION NOS.1122 TO 1127 OF 1995

MR PV HATHI for Petitioner

MR DK NAKRANI for Respondent No. 1

MR SN THAKKAR for Respondent No. 2

CIVIL REVISION APPLICATION NOS.1128 TO 1133 OF 1995

MR PV HATHI for Petitioner

MR UM SHASTRI for Respondent No. 1

MR SN THAKKAR for Respondent No. 2

CIVIL REVISION APPLICATION NOS.1134 TO 1140 OF 1995

MR PV HATHI for Petitioner

MS VASUDDATA BHATT for Respondent No. 1

MR SN THAKKAR for Respondent No. 2

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/11/1999

#### ORAL JUDGEMENT

1. As all these Civil Revision Applications are between the same parties and therein an identical legal issue has been raised, the same are taken up for hearing together and are being disposed of by this common judgment.

2. The facts are taken from the Civil Revision Application No.1107/95 on the request of the learned counsel for the parties.

3. The plaintiff - petitioner is a limited Government Company and carries on various activities for the promotion and development of Small Scale Industries in the State by procuring and distributing scares and controlled industrial raw materials to Small Scale Industries in the State. The respondent No.1 is the Railway acting as carriers of the raw materials despatched by the respondent No.2 for the use of the plaintiff - petitioner and it was the responsibility of the Railway Administration to deliver the raw materials without any loss or damage or shortage to the plaintiff petitioner - consignee. There was shortage of 1.200 M.T. in goods consigned, which was recorded on reweighment of the railway wagon. The petitioner accordingly lodged its claim under section 78-B of the Railways Act with Railway Administration. Railway Administration repudiated its liability under one pretext or another and did not make good the loss of the value of Rs.3410-72 ps. The plaintiff - petitioner accordingly filed Civil Suit No.1971/99 in the court of Small Causes at Ahmedabad on

28.6.1988. The respondent No.2 - Steel Authority of India Limited was joined in the suit as necessary and proper party making it jointly and severally liable if ultimately the decree is passed in favour of the plaintiff - petitioner. The facts are given out that the respondent No.2 sold by its invoice No.10/78/354 dated 24.3.1987, 55.400 M.T. pig iron to the plaintiff petitioner and entrusted the goods for safe carriage and delivery to the plaintiff - petitioner at Ahmedabad through the first respondent by railway receipt. The suit has been contested by both the respondents. By Act No.54/87 the Railway Claims Tribunal came to be constituted and the jurisdiction, power and authority as were exercisable before the date of the constitution of the Tribunal by any Civil Court, or a Claims Commissioner, relating to responsibility as carriers under Chapter VIII of the Act thereof in respect of the claims for compensation for loss, damage of the goods entrusted to the Railway Administration for carriage by railway was made exclusively triable by that Tribunal under section 13 of the Act. No court or authority had any jurisdiction, power or authority in relation to such matters referred to in Section 13 on and from the appointed date as provided by section 15 of the said Act. As a result of this subsequent development which has taken place the suit of the plaintiff - petitioner was came to be transferred to the Railway Claims Tribunal at Ahmedabad on its constitution. The Tribunal however returned the suit to the Small Causes Court at Ahmedabad on 18.12.1990 on the ground that it had no jurisdiction to pass any decree against the defendant No.2. On 6.9.1991 the Small Causes Court, Ahmedabad without giving any notice and opportunity of hearing to the plaintiff petitioner dismissed the suit against the Railway Administration on the ground of jurisdiction and ordered the suit to proceed against the respondent No.2 only. Against this order of the Judge, Small Causes Court, Ahmedabad the plaintiff - petitioner approached to the Appellate Bench of the Small Causes Court, Ahmedabad by filing a New Trial Application under section 38 of the Presidency Small Causes Court Act and prayed for quashing and setting aside of the order of the Judge, Small Causes Court, Ahmedabad. The New Trial Application being N.T.Application No.30/91 was came to be rejected by the Appellate Bench of the Small Causes Court, Ahmedabad under its order dated 17.4.1995. Hence, these Civil Revision Applications. In all these Civil Revision Applications, an identical order has been passed by the courts below.

4. Learned counsel for the petitioner contended

that, the Appellate Bench of the Small Causes Court, Ahmedabad accepted that the Judge, Small Causes Court, Ahmedabad passed the order dated 6.9.1991 without notice and opportunity of hearing to the plaintiff - petitioner, but still it has declined to interfere in the matter which is wholly unjustified, arbitrary and a material irregularity committed by it in exercising of its jurisdiction.

5. Mr.Hathi learned counsel for the petitioner submits that out of two defendants in the suit against one nodoubt the suit was not maintainable in the Small Causes Court, Ahmedabad, but that without notice and opportunity of hearing to the plaintiff - petitioner the suit should not have been ordered to be dismissed against this defendant. Learned courts below, in his submission, have lost sight of the fact that it is a case of short delivery of the consignee's goods and earlier the matter has been sent to the Tribunal.

6. Mr.Hathi submits that in case notice and opportunity of hearing would have been given to the plaintiff - petitioner, he has right of election and he could have elected accordingly it wants to continue the suit against the defendant No.2 or only against the defendant No.1.

7. Lastly, Mr.Hathi submits that this was necessary for the reason that the plaintiff - petitioner has to examine the matter and to decide against which defendant it desires to proceed. On being asked by the court Mr.Hathi fairly submits that this point was not very specifically raised before the Appellate Bench of the Small Causes Court, Ahmedabad. However, Mr.Hathi submits that it is purely a legal issue and it can be raised in the revision application before this court. On being asked by the court, learned counsel for the plaintiff petitioner asserts that the Corporation has agreed to delete the name of the Steel Authority of India Limited from this suit out of which this civil revision application has arisen. He has produced on the record of this civil revision application - xerox copy of the letter of the Manager (Law) of the Gujarat Small Industries Corporation Ltd., at Ahmedabad dated 20.10.1995. This letter is taken on the record.

8. Learned counsel for the respondent No.2 supports the case of the petitioner.

9. Learned counsel for the respondent No.1 strongly opposed the revision application. Ms.Sidhdhi Talati has

advanced leading arguments which have been adopted by other learned counsel. She contends that the plaintiff petitioner knows well that the suit is not maintainable against the respondent No.2 and still it has not taken steps to correct the plaint accordingly.

10. It has next been contended that both the courts concurrently have decided the matter against the petitioner and prayer now made for the deletion of the name of the Steel Authority of India Limited from the suit may not be granted. In her submission, this point was not raised by the plaintiff petitioner before the Appellate Bench of the Small Causes Court, Ahmedabad and this court may not permit it to be raised by the petitioner at this stage.

11. Further it is contended that the plaintiff petitioner had to approach to the Small Causes Court, Ahmedabad itself for such prayer, which has not been done.

12. Lastly, it is contended that the judgment of the Appellate Bench of the Small Causes Court, Ahmedabad is perfectly legal and justified in which no interference is called for.

13. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

14. Letter of the Manager (Law), Gujarat Small Industries Corporation Ltd., Ahmedabad dated 20.10.1995 reads as under:

"You are aware that the Corporation has filed Revision Applications before the High Court against the judgment delivered by the Small Causes Court of Ahmedabad in 31 cases, through you.

As discussed with you, the Corporation has agreed to delete the name of Steel Authorities of India Limited from the aforesaid 31 cases and to contest the matter against the Railways.

You are now requested to take necessary action in the matter at the earliest, as above."

15. In this case the petitioner has not taken the matter in its correct perspective and I am constrained to

say that, nobody from the Corporation as well as its officer and the advocate has taken care to see against which of the defendants it has to proceed in the suit. The petitioner, its officer and advocate would have well aware of the fact of constitution of the Tribunal for adjudication of such claims and bar of the jurisdiction of the civil court in the matter. The suit was once transferred to the Tribunal which fact was very well known to its officers and advocate. The Tribunal has sent the matter back to the Small Causes Court, Ahmedabad as it has no jurisdiction to make any order against the Steel Authority of India Limited. Obviously, the petitioner could have taken care then and there and could have deleted the name of the Steel Authority of India Limited before the Tribunal itself. Neither Law Officer, other officers and Advocate of the Corporation has cared to examine the matter at that stage. The matter was taken very casually and in routine. Litigations seem to be for the benefits of the officers of the Corporation which is clear from this case where a simple matter has been made complicated and as a result thereof the Corporation has to bear out heavy expenses of the litigations. From the letter dated 20.10.1995 it is clear that the Corporation is interested to proceed against the railway administration only. I fail to see why it has not been made clear at the appropriate stage. The Tribunal has remitted the matter back to the Small Causes Court, Ahmedabad and at that point of time, nobody from the side of the Corporation has bothered to examine the matter. The suit has come back to the Small Causes Court, Ahmedabad, and it was the duty of the officer of the Corporation and its advocate to take appropriate decision against which of the defendants it wants to proceed i.e. Railway Administration or Steel Authority of India Limited. This has not been done and it results in 31 appeals before the Appellate Bench of the Small Causes Court, Ahmedabad and 31 revision applications in turn before this court. Steel Authority of India Limited has unnecessarily been dragged into the litigation. The petitioner was interested only to proceed against the Railway Administration. Steel Authority of India Limited was unnecessarily been dragged in litigations, more precisely four litigations.

16. It is true that the Small Causes Court, Ahmedabad has not given notice or opportunity of hearing to the petitioner. However, the petitioner has to take care of its own litigation and immediately on remittance of these matters to the Small Causes Court, Ahmedabad by the Tribunal, it should have made its stand clear. The petitioner itself is responsible for all these

litigations. In fact, it itself has responsible for this decision of the Small Causes Court, Ahmedabad. For its own negligence, carelessness and omission it is unnecessarily blaming to the court. The order which is made in these cases by the Small Causes Court, Ahmedabad though it is not the stage where final opinion has to be given, but prima facie, I am satisfied that no notice or opportunity of hearing is required to be given to the petitioner. The petitioner being plaintiff has to make it clear to the court against which of the defendants it desires to proceed in the suit. The Appellate Bench of the Small Causes Court, Ahmedabad has not committed any error much less any material irregularity in exercise of its jurisdiction in passing of the impugned order. The point which is raised before this court has not been raised by the petitioner before the Appellate Bench of the Small Causes Court, Ahmedabad. That shows how casually and carelessly the matters are being taken up by the officers of the petitioner at all the stages. I do not find any illegality in the judgment of the Appellate Bench of the Small Causes Court, Ahmedabad. I find sufficient merits in the contention of the learned counsel for the respondent No.1 that this court may not interfere with impugned order. If, we go by the strict legal approach in these matters, no interference is called for of this court, but for the carelessness, negligence or omission on the part of the persons concerned or incharge of these matters of the petitioner these revision applications are dismissed. It may result in heavy losses to a State own Corporation.

17. It is people money. In our country accountability of the concerned officer is not there and in many cases Public exchequer has to suffer. Moreover, in case on this technical approach these matters are being dismissed it may result in denial of substantial justice to the State own Corporation. What it could have done either before the Tribunal or before the Small Causes Court, Ahmedabad in case if it is permitted to be done by this court at this stage it will not cause any prejudice or will not occasion any failure of justice to the Railway administration or Steel Authority of India Limited. The causes are to be decided on merits as far as possible. Substantial justice are to be done to the parties. The suit has been filed in 1988 and for all these years because of the negligence, carelessness and omission on the part of the officer incharge of these matters in the corporation, the same are still at their initial stage. If the causes of the State own Corporations are dismissed in this way because of careless, negligence, omission, inaction or causal

approach of the officers of the Corporation the public exchequer will suffer heavily. It is high time and in case accountability of the officer of the corporation are not fixed, nobody will take care and matters of substantial value would go in this way and manner, heavy expenses are incurred by the corporation for this litigation which otherwise was totally uncalled for. If, due care and caution would have been taken by the officer incharge of these matters in the corporation, these litigations would not have been there and by the time claim applications of the petitioner would have been disposed of by the Tribunal finally. The Small Causes Court, Ahmedabad should have also taken a reasonable care in these matters. It would have been better and advisable to afford an opportunity to the petitioners of election of the party and forum. It is true that it was the duty of the petitioner to make its position clear. But in the facts of this case where the Tribunal remitted matters back to the Civil Court as Steel Authority of India Limited was there as a party, the court could have point out and ascertain from the petitioner against which of the defendants it desires to proceed. Where the petitioner elects to proceeds only against the Railway, Civil Court has no option except to send the matter to the Tribunal. In the facts of this case the Civil Court has also not taken a reasonable care in the matter. Similarly, Appellate Bench has also acted too technical in these matters.

18. Be that as it may. The Corporation is responsible for all these litigations otherwise what now they are doing before this court, by filing a simple application even after the order passed by the Small Causes Court, Ahmedabad it could have been possible before the lower court. The review application could have been filed in the trial court itself and I expect and believe that in case such an application would have been filed, certainly the court would not have been too technical and the petitioner would have been permitted to withdraw the suit against the defendant No.2 and as a result thereof the suit would have been transferred again to the Tribunal. But, for this simple application they firstly preferred a New Trial Application and then these revision applications in this court which is already heavily burdened with the litigation. None other than a State own Corporation has additionally burdened courts by filing of these matters, firstly to the Appellate Bench of the Small Causes Court, Ahmedabad and these revision applications before this court. This court already facing problem how to reduce high pendency of the cases. Total 62 cases were filed. Precious and valuable time of



the courts have been consumed. The corporation has to take all care that where it is not necessary, litigation may not be there from its side in the courts. It is high time where joint efforts are to be made by all concerned i.e. bench, bar and litigant to see that all avoidable litigations may not come before the courts.

19. In the facts of these cases, I find it to be an appropriate and fit case as to do substantial justice to the petitioner to exercise suo moto powers under Article 227 of the Constitution and to quash and set aside the order below Exh.1 in the suits. On the request of the petitioner all the suits are dismissed against the defendant No.2 Steel Authority of India Limited. As a result of the dismissal of the suits against the Steel Authority of India Limited, the suits are not triable and not maintainable in the civil court. All the suits are ordered to be transferred to the Railway Claims Tribunal at Ahmedabad. The trial court is directed to forthwith on receipt of the writ of this order transfer all the suits to the Railway Claims Tribunal at Ahmedabad. Civil Revision Applications and rule therein stand disposed of accordingly. No order as to costs in favour of the respondent No.1. The petitioner is directed to pay Rs.30,000/- as costs of the litigations i.e. suits, cases before the Railway Claims Tribunal, again suit before the Small Causes Court, Ahmedabad, litigation before the Appellate Bench of the Small Causes Court, Ahmedabad and these revision applications in this court to the respondent No.2. Total cases are 31 suits, 31 application before the Appellate Bench of the Small Causes Court, Ahmedabad and 31 revision applications before this court.

(S.K.Keshote,J.)

(pathan)